HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2143 OF 2005.

Kiran Hari Nade. ...Applicant

V/s.

The State of Maharashtra. ...Respondent

Shri Ishwarlal B. Sonavane, for applicant.

Shri V.B.Konde-Deshmukh, APP for respondent.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 6, 2005

P.C. :-

1. Heard the learned counsel for the parties.

2. Perused the record.

3. The prosecution case is that one Karna had participated in the commission of offence alongwith other accused, as a result of which, Ganesh Nadar succumbed to the injuries and Manish suffered injuries to his person. It is also prosecution case that the said Karna was responsible to assault Manish and caused injury by Gupti.

4. The argument of the learned counsel for the applicant is that there is nothing on record to

indicate that the person described as ‘Karna’ was none else, but the applicant. The learned APP has relied on the arrest panchanama to contend that the applicant himself has disclosed his identity as Kiran @ Karna. That evidence obviously, will be inadmissible because the disclosure made before the police cannot be the basis to proceed against the applicant. It appears that no efforts have been made by the Investigating Officer, to collect the independent material to show, that the person described as Karna in the complaint is none else, but the applicant. No such material is placed before me during the course of argument, inspite of the repeated directions given in that behalf, although the Investigating Officer is personally present in the court. This by itself, is a good ground to release the applicant on bail without examining the argument as to whether he would be responsible for offence under section 302 or 307 of the I.P.Code. It is argued that as prosecution evidence suggests that the applicant Kiran, had assaulted only the injured witness Manish, at best offence under section 307 is attracted. In as much as, no overt act is attributed to the applicant for assaulting deceased Ganesh Nadar.

5. The next argument that requires to be considered, which had weighed with the lower court, is the

availability of the applicant during the trial. The applicant has relied on the ration card to contend that he is permanent resident of Vile-Parle. There is nothing on record to doubt the authenticity of the documents relied by the applicant, except the bare words of the Investigating Officer that the applicant is not a permanent resident of the Vile-Parle. There is no dispute that there is no antecedent against the applicant, investigation has been completed, chargesheet has been filed. Accordingly, the apprehension expressed by the Investigating officer can be taken care by imposing strict condition on the applicant. There is no reason to refuse bail merely because of the apprehension, which, in my view, is not a reasonable one nor substantiated. Accordingly, this application is allowed.

(i) Applicant is directed to be released on bail in connection with the C.R.No.261 of 2004 registered at Shivaji Park Police Station on executing personal bond in the sum of Rs.25,000/-(Rs.twenty five thousand only) with two local sureties in like amount.

(ii) The applicant shall not influence the prosecution witnesses nor tamper the prosecution

evidence in any manner, whatsoever.

(iii) The applicant shall not enter the jurisdiction of Shivaji Park Police Station during the pendency of the trial.

(iv) The applicant shall report to the nearest police station in Vile-Parle where the applicant resides, once in a week on Sunday between 10 a.m. to 2 p.m..

(v) The applicant shall co-operate for early disposal of the trial. In case, the trial Court is of the opinion that the applicant is responsible for the delay of the trial in any manner, that opinion will be recorded in the roznama and that can be the basis for cancellation of bail.

6. Application is disposed of in the above terms.